

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

XIU FANG LUO,)
Plaintiff,)
v.)
MICHAEL CHERTOFF, Secretary,)
Department of Homeland Security; EMILIO)
GONZALEZ, Director, United States)
Citizenship and Immigration Services;)
JOSEPH P. RUSSONIELLO,* United)
States Attorney, California Northern)
District; ROSEMARY MELVILLE, San)
Francisco District Director; ROBERT S.)
MUELLER, III, Director of the Federal)
Bureau of Investigation,)
Defendants.)

No. C 08-0340 PJH
~~PROPOSED~~ ORDER

On March 10, 2006, Plaintiff filed an application for naturalization with the U.S. Citizenship and Immigration Services (“USCIS”). Declaration of Randall Ricks (“Ricks Decl.”), ¶ 10. She was interviewed by the USCIS on July 18, 2006. *Id.* On January 17, 2008, Plaintiff brought this action pursuant to 8 U.S.C. § 1447(b). The security checks and background investigations were completed on June 2, 2008. Ricks Decl., ¶ 10.

Under § 1447(b), if USCIS fails to grant or deny a citizenship application within 120 days after the date “on which the examination is conducted under” § 1446, an alien applicant may obtain a hearing on the matter in district court. Alternatively, the district court may choose to remand the matter, with appropriate instructions, to USCIS for adjudication.

Courts in this district have recognized that since March 1, 2003, the Department of Homeland Security has been the agency responsible for implementing the Immigration and Nationality Act. See 6 U.S.C. §§ 271(b)(5), 557; Konchitsky v. Chertoff, No. C-07-00294 RMW, 2007 WL 2070325, at *6 (N.D. Cal. July 13, 2007); Dmitriev v. Chertoff, No. C 06-7677 JW, 2007

*Pursuant to Fed. R. Civ. P. 25(d)(1), Joseph P. Russoniello is substituted for his predecessor, Scott Schools, as the United States Attorney for the Northern District of California.

PROPOSED ORDER
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1 WL 1319533, at *4 (N.D. Cal. May 4, 2007). Accordingly, the only relevant defendants here are
2 those within the Department of Homeland Security, and Defendants Michael B. Mukasey and Robert
3 S. Mueller will be dismissed. Moreover, Plaintiff has failed to state any claim against the United
4 States Attorney. Accordingly, Defendant Russoniello will be dismissed.

5 Plaintiff's background check is complete, and USCIS is prepared to adjudicate her
6 application. Ricks Decl., ¶ 10. Accordingly, the Court will exercise its remaining option under
7 § 1447(b), and remand the matter to the USCIS. Scego v. Gonzales, No. 07-0598 MJP, 2007 WL
8 2155724, at *2-3 (W.D. Wash. July 24, 2007).

9 Defendants Mukasey, Mueller, and Russoniello are hereby dismissed, and this matter is
10 remanded to USCIS for adjudication within thirty (30) days of the date of this order. The Clerk shall
11 close the file.

12 IT IS SO ORDERED.

13 Dated: 7/25/08



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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

XIU FANG LUO,

Case Number: CV08-00340 PJH

Plaintiff,

CERTIFICATE OF SERVICE

v.

MICHAEL CHERTOFF et al,

Defendants.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 25, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Xiu Fang Luo
63 Mercury Street
San Francisco, CA 94124



Dated: July 25, 2008

Richard W. Wieking, Clerk
By: Nichole Heuerman, Deputy Clerk